JOHN F. CORCORAN, ICLERK BY: HMCDOXOGO

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA ROANOKE DIVISION

UNITED STATES OF AMERICA)	Criminal Case No. 7:94cr40106-7
v.)	ORDER
CHARLES EDWARD DODSON)))	By: Hon. Jackson L. Kiser Senior United States District Judge

This matter is before the court upon defendant Charles E. Dodson's motion pursuant to 18 U.S.C. § 3582(c)(2) for recalculation of his guideline pursuant to Amendment 715 to the United States Sentencing Guidelines ("USSG") and a corresponding reduction of his sentence. However, because the amendment is not applicable to Dodson, I will deny his motion.

Section 3582(c)(2) provides that a "modification of an imposed term of imprisonment" is permissible for "a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered . . . if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission." The applicable policy statement provides as follows:

Where a defendant is serving a term of imprisonment, and the guideline range applicable to that defendant has subsequently been lowered as a result of an amendment to the Guidelines Manual listed in subsection (c) below, a reduction in the defendant's term of imprisonment is authorized under 18 U.S.C. § 3582(c)(2). If none of the amendments listed in subsection (c) is applicable, a reduction in the defendant's term of imprisonment under 18 U.S.C. § 3582 is not consistent with this policy statement and thus not authorized.

U.S.S.G. § 1B1.10(a) (emphasis added). Amendment 715 is listed in section 1B1.10(c) and, therefore, may be applied retroactively on a section 3582 motion. <u>United States v. McHan</u>, 386 F.3d 620 (4th Cir. 2004) (citing <u>United States v. Armstrong</u>, 347 F.3d 905, 909 (5th Cir. 2003). However, the Amendment is not applicable to Dodson. Amendment 715, effective and retroactive as of May 1, 2008, modifies the commentary to § 2D1.1 to revise the manner in which base offense levels are

determined in cases involving cocaine base and one or more other controlled substance, in order to correct a sentencing anomaly affecting the application of Amendment 706. In this case, Dodson's guideline was calculated using cocaine base only and, therefore, Amendment 715 is inapplicable.\(^1\)
Accordingly, it is hereby **ORDERED** that Dodson's motion to reduce his sentence pursuant to \(^3\) 3582(c) [Docket #900] shall be and hereby is **DENIED**.

The Clerk is directed to send a certified copy of this Order to defendant.

ENTER: This St day of September, 2008.

Senior United States District Judge

¹ I note that I previously determined that Dodson was eligible for a reduction pursuant to Amendment 706, however, I declined to reduce his sentence, finding that his sentence of 360 months, based on a departure from his original guideline range of life, remained appropriate.